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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
1993 Annual Access Tariff Filings	)	CC Docket No. 93-193, Phase I, Part 2
	)	
GSF Order Compliance Filings	)	
	)	
1994 Annual Access Tariff Filings	)	CC Docket No. 94-65
	)	
1995 Annual Access Tariff Filings	)	Bell Atlantic Application For Review
	)	
1996 Annual Access Tariff Filings	)	

BELL ATLANTIC[1] REPLY

As demonstrated in its Application for Review, in tariff years 1993 through 1996 Bell Atlantic shared the full amount required under Commission rules. The only dispute in the tariff investigation was not the total amount of sharing, but rather the allocation of sharing among price cap baskets. As required by the Commission, Bell Atlantic "corrected" its allocation by adjusting the index in all of its baskets. Bell Atlantic's Application seeks review of the Common Carrier Bureau's subsequent order, which disallowed the correction and instead required that Bell Atlantic share additional amounts in one basket with no offsetting adjustment in the other baskets.

AT&T and MCI do not dispute these basic facts, but instead try to evade their force by arguing that the Commission's tariff investigation order did not provide adequate notice that

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

price cap indices could go up, as well as down, and that Bell Atlantic's Application is not timely. None of these arguments have merit, and the Application should be granted.

I. Parties Were On Notice That All Baskets Could Be Adjusted -- Up Or Down

AT&T and MCI argue that the filed rate doctrine and the prohibition against retroactive ratemaking prevent the Commission from making the adjustments sought in Bell Atlantic's Application.[2] This is wrong. As Bell Atlantic has previously explained,[3] the tariff investigation launched in response to AT&T's petition placed parties on notice there could be either downward or upward adjustments to all baskets at the conclusion of the investigation. As the courts have made clear, notice of this type "changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision."[4]

AT&T and MCI do not question this rule of law, but instead argue that the notice was not adequate.[5] Again, their arguments ignore the record evidence and are wrong.

As explained in Bell Atlantic's Application (and ignored by AT&T and MCI), the 1993 Order was absolutely clear that the Commission was reviewing the distribution of sharing to all

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2 MCI at 6; AT&T at 8-9.

3 ***See*** Bell Atlantic Application for Review at 5-6, 12 (filed July 25, 1997); ***Bell Atlantic Petition For Clarification***, Bell Atlantic Reply at 3-5 (filed June 6, 1997).

4 ***Columbia Gas Transmission Corp. v. FERC***, 895 F.2d 791, 797 (D.C. Cir. 1990).

5 ***See*** MCI at 10; AT&T at 9.

baskets and that all price cap indices were subject to change.[6] Indeed, AT&T recognized this fact in its own filings in this proceeding. As documented in the attachments to the Application, AT&T specifically calculated both the upward and downward revisions to the price cap indices and requested that all the baskets be adjusted accordingly.

Even MCI acknowledges that the order suspending the tariffs "contemplated that the rates . . . might have to be adjusted by reallocating sharing among the baskets."[7] But MCI argues that such adjustment could only have taken place if the Commission had concluded its investigation in the middle of a tariff year, and then only for the remainder of that year. MCI's attempt to recast the facts is not supported by any language in the record. Indeed, AT&T's own contemporaneous calculations assume that in each year, all the baskets would be adjusted for a full year's worth of sharing.[8]

II. The Bureau's Order Forced Additional Sharing Obligations On Bell Atlantic

As Bell Atlantic demonstrated, and AT&T and MCI do not challenge, Bell Atlantic already shared the full amount required by the Commission's rules, and requiring it now to effectively share even more would violate those rules.[9] Yet that is exactly what the Bureau's order requires. AT&T

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6 Application For Review at 5. AT&T and MCI also claim that the notice is inadequate because there is no explicit statement that rates were subject to a true-up mechanism. No such statement was made because the Commission was not evaluating a specific rate. Rather, the Commission was evaluating the level of price cap indices for all of the various baskets. Once the Commission adjusts the price cap indices, it is up to the regulated company to determine the actual rate levels. Regardless, the Commission was explicit that the question before it was whether Bell Atlantic must "recalculate its price cap ***indices*** to reflect the change in the sharing allocation." ***1993 Annual Access Tariff Filings***, 8 FCC Rcd 4960, 4966 (1993).

7 MCI at 9.

8 Application For Review, Exhibit 2.

9 Application For Review at 8-10.

and MCI attempt to paper over this problem by characterizing the amounts as a refund rather than sharing.[10] Their semantic argument misses the point. The undisputed basis for the Bureau's order is a recalculation of prior years' sharing in the Common Line Basket. Unless Bell Atlantic is permitted offsetting adjustments in other baskets, the total amount of its sharing obligation has been increased. While the method of distributing that additional sharing may be called a refund, the result is that Bell Atlantic is forced to share more than the amount which all parties acknowledge is allowable under the rules.[11]

MCI complains that it "never got the benefit of the sharing amount" missed in the Common Line Basket.[12] It fails to acknowledge that it and AT&T benefited from the over-sharing in the other baskets. Now, rather than be made whole, they seek to obtain a windfall by keeping the excess amounts from those baskets and demanding a refund in the Common Line. Only by allowing an adjustment to all baskets is the allocation of sharing truly corrected.

III. Bell Atlantic's Petition Was Timely

AT&T argues that Bell Atlantic's application was untimely.[13] AT&T does not dispute that Bell Atlantic filed its Application within thirty days of notice of the Bureau's order, as required under Commission rules.[14] Instead, AT&T argues that Bell Atlantic's real dispute is with the

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10 MCI at 11; AT&T at 6.

11 As an illustration, suppose Bell Atlantic had refused to pay any sharing in a given year and AT&T had complained in a tariff proceeding. The Commission would resolve the dispute by requiring Bell Atlantic to "refund" the full amount of sharing. It is gibberish to suggest that the refunded amount in that instance would not be sharing, yet objecting parties make that exact argument here.

12 MCI at 12; ***see also*** AT&T at 7.

13 AT&T at 3.

14 47 C.F.R. § 1.115(d).

Commission's underlying order. But, as Bell Atlantic demonstrated in its Petition for Clarification of that order, the Commission never clearly addressed the issue tentatively resolved by the Bureau in the order under review here.

On the contrary, the Commission's order found that Bell Atlantic and Pacific Bell "incorrectly allocated their sharing obligations among the various service baskets."[15] The order therefore required Bell Atlantic to "correct" its allocation among baskets. Bell Atlantic's timely petition for clarification of the way in which this "correction" was to be calculated was rejected by the Bureau. This Application is Bell Atlantic's first opportunity to obtain a decision from the Commission concerning the ambiguities in its own order. AT&T's procedural shell game is a transparent attempt to avoid the underlying issues of Bell Atlantic's claim.

Conclusion

The Commission should reject the opposing arguments and grant Bell Atlantic's Application for Review.

Respectfully submitted,

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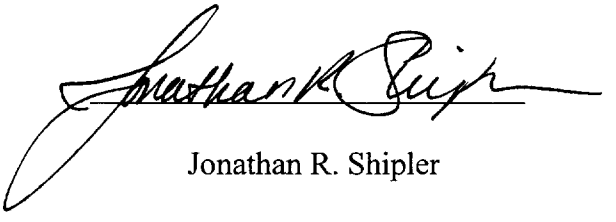
15 ***1993 Annual Access Tariff Filings***, Memorandum Opinion and Order at ¶ 39 (rel. Apr. 17, 1997).

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 1997, a copy of the foregoing "Bell Atlantic Reply" was served by first class U.S. mail, postage prepaid, on the parties listed on the attached service list.



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